

## ***Introduction***

*This booklet provides an overview of the Equal Employment Opportunity (EEO) complaint process within the Centers for Medicare & Medicaid Services (CMS). For further information contact the Office of Equal Opportunity and Civil Rights (OEOCR) at 410-786-5110.*

## **Laws and Regulations governing the EEO Complaint process**

### **Title VII of the Civil Rights Act of 1964, as amended**

Title VII prohibits discrimination based on race, color, religion, sex, or national origin. It also prohibits reprisal or retaliation for participating in the discrimination complaint process or for opposing any unlawful employment practice under Title VII.

### **Age Discrimination in Employment Act (ADEA) of 1967, as amended**

The ADEA prohibits discrimination in employment on the basis of age (40 years or older). It also prohibits retaliation against individuals exercising their rights under the statute.

### **Rehabilitation Act of 1973, as amended**

The Rehabilitation Act prohibits discrimination on the basis of mental and physical disability. It also prohibits retaliation against individuals exercising their rights under the Act. The Rehabilitation Act requires agencies to reasonably accommodate the known physical or mental limitations of qualified disabled employees or applicants unless the Agency can demonstrate that the accommodations would impose an undue hardship on the operation of its program.

### **Equal Pay Act of 1963 (EPA)**

The EPA prohibits sex-based wage discrimination. It prohibits agencies from paying employees of one sex lower wages than those of the opposite sex for performing substantially equal work under similar working conditions. It also prohibits retaliation against individuals exercising their rights under the statute.

Sex-based claims of wage discrimination may also be raised under Title VII; individual so aggrieved may thus claim violations of both statutes simultaneously.

Title 29 Code of Federal Regulations

Part 1614 (29 CFR 1614)

29 CFR 1614 contains the regulations governing the processing of federal sector discrimination complaints.

Although not covered by the referenced Federal statutes and regulations, the Department of Health and Human Services has policies addressing allegations of discrimination based on sexual orientation and discrimination alleged by of Commissioned Corps personnel. **(See Sexual Orientation and Commissioned Corps Claims.)**

## **FEDERAL EEO POLICY**

It is the policy of the Federal government to provide equal opportunity in employment for all persons; to prohibit discrimination in employment because of race, color, religion, sex, national origin, age, or disability and to promote the full realization of equal employment opportunity through a positive, continuing program as it applies to every aspect of employment policy and practice. Further, it is the Federal government's policy that there will be no reprisal actions taken against any person who takes part in the EEO process or who speaks out against practices he or she believes may be discriminatory.

### **Pre-complaint Process**

As an employee, former employee, or applicant for employment with CMS, you may file an EEO complaint if you believe you have been discriminated against because of your race, color, religion, sex, age (40 or older), national origin, or physical or mental disability, or in retaliation for participating in the EEO process or opposing discriminatory practices. However, you must first participate in the pre-complaint stage before filing a formal complaint in order to try to informally resolve the matter.

### **Initiating the Process in a Timely Manner**

To begin the pre-complaint process, you must contact OEOCR within **45 calendar days** of the date of the incident(s) that you believe to be discriminatory, or in the case of a personnel action, within **45 calendar days** of the effective date of the action.

- ✓ You may request a counselor of your choice, and every effort will be made to accommodate your request. A listing of CMS's EEO Counselors is located on the OEOCR web site and on Agency bulletin boards.

### **Representation**

You have the right to have a representative of your choice throughout the complaint process, provided that it does not conflict with the official or collateral duties of the representative. Unless you state otherwise in writing, after the agency has received written notice of the name, address and telephone number of your representative, all official correspondence shall be with your representative with copies to you. If you choose to be represented by an attorney, service of all official correspondence will be made on both you and your attorney; but time frames for receipt of material shall be computed from the time of receipt by your attorney. Finally, you are responsible for proceeding with the complaint at all times whether or not you have designated a representative.

### **Anonymity**

You may request to remain anonymous during the pre-complaint process **only**.

## **Change of Address**

If you change your mailing address, you must notify OEOCR. Failure to keep OEOCR advised of your current address may result in your complaint being dismissed.

## **Providing Information during the Pre-complaint process**

Information will be obtained from you for the purpose of looking into the matter informally and attempting to resolve your concerns.

The Counselor will provide you with

- ✓ A written notice of your rights and responsibilities
- ✓ Information regarding the Agency's ADR program
- ✓ An explanation of the differences between the traditional EEO counseling process and ADR.

## **EEO Counseling**

EEO counseling inquiries are conducted informally and do not involve either extensive documentation or written testimony. Counseling is generally conducted in person; however, counseling may be conducted by telephone or mail.

The counselor will make necessary inquiries of CMS employees, witnesses, supervisors, and those individuals deemed to have direct involvement or relevant information regarding the matter(s). He or she will request access to CMS regulations and documents germane to the matter and request responses to the claim(s) alleged to be discriminatory. The information will assist him or her in understanding the claim(s) and provide direction for seeking resolution.

If the matter is not resolved within **30 calendar days** from the date on which you first seek EEO counseling, the counselor:

1. Will conduct a final interview and issue you a Notice of Right to File a Formal Complaint of Discrimination. The Notice may be issued in person or by certified mail.  
Or
2. May ask you to agree in writing to extend the counseling period for a period no longer than 60 days. In this case, the counselor will conduct the final interview and issue you a Notice of Right to File a Formal Complaint at the end of the agreed upon extension.

## **Participating in ADR**

CMS has an ADR program for EEO complaints in which you may agree to participate, in lieu of traditional EEO counseling. The ADR election must be in writing. If elected, ADR must be completed within 90 calendar days from your date of initial contact.

Unlike traditional counseling, ADR provides an interest-based means of addressing the matter. Mediation is the ADR process CMS uses to try and resolve EEO complaints. In mediation, a neutral third party assists the involved parties (employee and employer) in reaching a mutually acceptable outcome to issues in dispute. Mediation involves collaborative problem solving. Both parties through direct communication discuss the issues in dispute and explore options for resolution.

The purpose of mediation is to share information, explore different perspectives, promote mutual understanding, and construct an outcome that addresses all parties' needs and interests. Mediation is informal and confidential. Nothing said or done during attempts to resolve the complaint can be made the subject of an EEO complaint.

If the matter is resolved in mediation, the terms of the agreement must be in writing and signed by both you and the agency official. If the matter is not resolved in mediation, you will receive a Notice of Right to File a Formal Complaint of Discrimination.

## **Formal Complaint Process**

### **Filing Formally in a Timely Manner**

To file a formal complaint, you must submit a signed statement to the Director, OEOCR. The statement must identify the action(s) or practice(s) that form the basis of the complaint and must also contain a telephone number and address where you and your representative can be contacted. If you are represented by an attorney, he or she may submit the complaint. However, if you are represented by someone who is not an attorney, **you** must sign the complaint and designate who your representative is in writing.

The formal complaint must be filed within **fifteen (15) calendar days** from the date you receive the written Notice of Right to File a Formal Complaint of Discrimination.

- If mailed, the complaint must be postmarked no later than **15 calendar days** after you receive the Notice of Right to File a Formal Complaint of Discrimination.
- If hand-delivered or faxed, the complaint must be received and appropriately date-stamped no later than **15 calendar days** after you receive the Notice of Right to File a Formal Complaint of Discrimination.

### **Receiving Acknowledgment and Acceptance of the Complaint**

Upon receipt of a formal complaint, the Agency will provide you with a written acknowledgement of receipt, the date the complaint was filed and a formal complaint number.

## **Intake Decision**

The Agency will also send you a letter identifying the claim(s) asserted and those that will be investigated. If the claim(s) asserted and the claim(s) to be investigated differ, you will be provided an explanation for the difference, including whether the Agency is dismissing a portion of the complaint and the reason(s) for the dismissal. If you disagree with the claim(s) identified, you may, within **seven (7) calendar days** submit a statement addressing the disagreement. The letter will become part of the complaint file. If the Agency reverses the previous decision, dismissing a portion of the claim(s) asserted, you will be notified in writing and informed of the claim(s) being accepted. However, if the Agency does not reverse the dismissal decision the Agency will notify you that there is no immediate right to appeal the partial dismissal. The partial dismissal shall be reviewed either by an EEOC Administrative Judge (AJ), if you request a hearing before an AJ, or by the Commission, if you file an appeal of the final agency action or Final Agency Decision (FAD). (See “Appealing the Decision or Filing a Civil Action.”)

## **Bases for Complaint Dismissal**

Prior to a request for a hearing, the Agency may dismiss an entire or portion of a complaint:

1. That fails to state a claim or states the same claim that is pending before or has been decided by the Agency or Commission;
2. That fails to comply with the applicable time limits;
3. That is the basis of a pending civil action in a United States District Court in which you are a party, provided that at least 180 days have passed since the filing of the complaint, or that was the basis of a civil action decided by a United States District Court in which you were a party;
4. Where you have raised the matter in a negotiated grievance procedure that permits allegations of discrimination or in an appeal to the Merit System Protection Board (MSPB) or indicates that you have elected to pursue the non-EEO process;
5. That is moot or alleges that a proposal to take a personnel action, or other preliminary step to take a personnel action, is discriminatory;
6. Where you cannot be located, provided reasonable efforts have been made to locate you and you have not responded within **15 days** to a notice of proposed dismissal sent your last known address;
7. Where you have failed to respond to the Agency’s written request for relevant information within **15 days** of receipt of the request or otherwise proceed with the complaint; or your response does not address the Agency’s request providing the request included a notice of proposed dismissal.
8. That alleges dissatisfaction with the processing of a previously filed complaint; or
9. Where it has been found that the complaint is a clear pattern of misuse of the EEO process.

## **Filing Both a Complaint and a Grievance**

As an employee of an Agency which has a collective bargaining agreement that permits allegations of discrimination to be raised in a negotiated grievance procedure, you must elect to raise the matter under either the EEO process or the negotiated procedure. You **can not** file an EEO complaint and a grievance covering the same matter, regardless of whether you allege discrimination in the grievance.

## **Complaint Investigation**

If your complaint is accepted, it will be assigned to an EEO investigator. The EEO investigator will develop an impartial and appropriate factual record upon which to make findings on the claims raised by the written complaint. The investigator is authorized to administer oaths and require employees to furnish testimony under oath or affirmation without a promise of confidentiality. The investigator will not take the side of any of the parties and does not make or recommend a finding of discrimination. Providing information that is requested is **mandatory**—both for you and for employee witnesses. If you do not provide requested information, the complaint may be dismissed.

## **Amending a Pending Complaint**

**At any time prior to the conclusion of the investigation**, you may amend the pending complaint to add claims that are like or related to those claim(s) raised in the pending complaint. You must submit a letter to the Director of OEOCR stating that you wish to amend your complaint to include the new incident(s).

The Agency will acknowledge receipt of the amendment, inform you of the date on which the amendment was filed and determine whether the new incident:

1. Provides additional evidence offered to support the existing claim, but does not raise a new claim in and of itself. In this case, the Agency will instruct the investigator to include the new incident in the investigation.
2. Raises a new claim that is like or related to the claim(s) raised in the pending complaint. In this case, the Agency will amend the pending complaint to include the new claim and instruct the investigator to include the new claim.
3. Raises a new claim that is **not** like or related to the claim(s) raised in the pending complaint. In this case, you will be advised that you must present the new claim to an EEO Counselor, and this new claim will proceed through the complaint process, subject to the regulatory requirements described herein.

If the complaint is amended, the investigation shall be completed within the earlier of **180 days** after the last amendment to the complaint or **360 days** after the filing of the original complaint.

If you wish to amend the pending complaint **after you have requested an EEOC hearing**, you must file a motion with the AJ to amend the complaint to include claims that are like or related to those raised in the pending complaint.

### Report of Investigation

The Agency will complete the investigation within **180 calendar days** from the date of filing the complaint, or when a complaint was amended, within the earlier of 180 days after the last amendment or 360 days after the filing of the original complaint. These timeframes may be extended up to an additional 90 calendar days if you and the Agency agree. Upon completion of the investigation, the Agency will provide you with a copy of the report of investigation (ROI), and shall notify you of your rights associated with the complaint process.

### Requesting an EEOC Hearing, ADR or an immediate Final Agency Decision

When you receive the ROI, you will be notified that you have the right to request a hearing and decision from an EEOC administrative judge; ADR, when appropriate; or a Final Agency Decision (FAD). You must make your election within **30 calendar days** of the date you receive the report.

- If you request a hearing, you must submit the request in writing directly to the EEOC office indicated in the Agency's acknowledgement letter. You must also provide a copy to the Agency.
- If you request ADR, and the request is deemed appropriate, a mediation session will be scheduled and all parties concerned will be notified. If mediation is not successful, you retain your right to elect either a hearing or an immediate FAD within **30 days** of the conclusion of mediation.
- If you request a FAD it will be issued within **60 calendar days** from date of the request.
- If you do not request a hearing, ADR or a FAD within the **30 calendar days**, the Agency will issue a FAD with appropriate appeal rights included.

### EEOC Hearing

The hearing is an adjudicatory proceeding that completes the process of developing a full and appropriate record. A hearing provides the parties with a fair and reasonable opportunity to explain and supplement the record, and in appropriate instances to examine and cross-examine witnesses. The EEOC will appoint an Administrative Judge (AJ) to conduct a hearing and issue a decision. Upon appointment, the AJ assumes full responsibility for adjudication of the complaint, including overseeing the development of the record. The AJ may:

- (1) Dismiss complaints pursuant to 29 CFR Part 1614.107, on his or her own initiative, after notice to the parties, or upon an Agency's motion to dismiss a complaint;
- (2) Notify the parties of the right to seek discovery prior to the hearing and may issue such discovery orders as are appropriate;
- (3) Regulate the conduct of a hearing;



- (4) Limit the number of witnesses where testimony would be repetitious;
- (5) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing;
- (6) Issue a decision on the complaint, and shall order appropriate remedies and relief where discrimination is found, within **180 calendar days** of receipt of the complaint file from the Agency, unless he or she determines that good cause exists for extending the time for issuing a decision;
- (7) Send copies of the hearing record, including the transcript, and the decision to the parties.

The Agency will provide for the attendance at a hearing of all employees approved as witnesses by the AJ. Attendance at the hearing is limited to persons determined by the AJ to have direct knowledge relating to the complaint. Hearings are part of the investigative process and are thus closed to the public.

### **Final Order**

Following receipt of the AJ's decision, the Agency will issue a final order within 40 days of receipt of the AJ's decision. The order will also contain notice of your right to appeal to the Equal Employment Opportunity Commission (EEOC), the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit and the applicable time limits for appeals and lawsuits.

If the final order does not fully implement the AJ's decision, the Agency will simultaneously file an appeal and append a copy of the appeal to the final order.

### **Final Decision**

The Agency will issue a FAD when dismissing an entire complaint, upon your requesting an immediate FAD, or when you fail to elect an option within **30 days** from receiving the ROI. The FAD will consist of findings by the Agency on the merits of each issue in the complaint, or, as appropriate, the rationale for dismissing any claim in the complaint, and when discrimination is found, appropriate remedies and relief. You will be provided appeal rights and the right to file a civil action in federal district court, the name of the proper defendant in the lawsuit and applicable time limits for appeals and lawsuits.

### **Appealing the Decision Or Filing a Civil Action**

You have the right to appeal the final agency decision or to file a civil action.

- If you decide to appeal the final agency decision before EEOC's, Office of Federal Operations (OFO), you have **30 calendar days** from the date you receive the decision. If your representative is an attorney, the **30 calendar days** begin when the attorney receives the final agency decision.

Appeals to OFO should be submitted on EEOC Form 573, Notice of Appeal/Petition to the Equal Employment Opportunity Commission.

You will need to serve a copy of the appeal on the agency at the same time it is sent to OFO, and to provide proof that this was done.

- If you decide instead to file a civil action in the appropriate U.S. district court, you have **90 calendar days** from the date of receipt of the final agency decision.

You may also file a civil action:

- At any time after **180 calendar days** from the date of filing the formal complaint if no agency decision has been issued and no appeal has been filed.
- Within **90 calendar days** of receiving the final EEOC decision on an appeal.
- At any time after **180 calendar days** from the date of filing an appeal with OFO if no EEOC decision has been issued.

## **Provisions Applicable to Particular Complaints**

### **Age Discrimination in Employment Act (ADEA) Complaints**

If you believe that you have been discriminated against on the basis of age (40 years or older), you have the right to file a formal complaint or to by-pass the administrative complaint processing procedures described above and file a civil action in an U.S. district court.

- If you file a formal complaint, you must exhaust your administrative remedies before going to civil court. (See “Appealing the Decision or Filing a Civil Action.”)
- If you decide to file a civil action, you must first provide the EEOC with a written notice of intent to sue under the ADEA. You must file the notice to the EEOC within **180 calendar days** of the date of the action you believe to be discriminatory. When you have filed this notice of intent to sue in a timely manner, you must wait at least **30 calendar days** before filing a civil action.

Mail your notice of intent to sue to:

Equal Employment Opportunity Commission  
Office of Federal Operations  
P.O. Box 19848  
Washington, D.C. 20036-9848

Or deliver in person to:

Equal Employment Opportunity Commission  
Office of Federal Operations  
1801 L Street, NW  
Washington, D.C. 20507-0002

Or fax it to: (202) 663-7022

## **Equal Pay Act (EPA) Complaints**

Complaints alleging sex-based wage discrimination may be filed under the EPA or under Title VII or under both statutes simultaneously. In the alternative, you may also file an EPA wage discrimination lawsuit in civil court without filing a sex-based claim under Title VII with the Agency or the EEOC.

## **Class Complaints**

A class is defined as a group of employees, former employees or applicants for employment who are alleged to have been adversely affected by an Agency personnel policy or practice which discriminates against the group on the basis of their **common** race, color, religion, sex, national origin, age or disability. A Class complaint is a written complaint of discrimination filed on behalf of a class by the agent of the class, alleging: 1) the class is so numerous that a consolidated complaint by the members of the class is impractical; 2) there are questions of fact common to the class (i.e., all members are of the same race, sex, etc.); 3) the claims of the agent of the class are typical of the claims of the class; and, 4) the agent of the class and, if represented, the representative, will fairly and adequately protect the interests of the class.

The regulatory requirements for class complaints provide a structure that is different from that of individual complaints. There is a four-stage process. The first stage is the establishment of a class complaint. At this stage, the class agent must seek counseling from an Agency EEO Counselor and undergo pre-complaint processing. The class complaint must be filed with the Agency that allegedly discriminated against the putative class; it must be signed by the class agent or a class representative and must identify the policy or practice adversely affecting the class, as well as the specific action or policy affecting the class agent. The Agency will then designate an Agency representative and forward the complaint, along with a copy of the EEO Counselor's report to the EEOC district office having jurisdiction where the complaint arose. The second stage is a determination from an EEOC Administrative Judge, subject to Agency final action, as to whether to certify the complaint as a class action. The third stage, assuming that the complaint has been certified as a class action, involves a recommended decision from the AJ on the merits of the class complaint, subject to final agency action in the form of a final decision. The fourth stage, where there has been a finding of class-based discrimination, is the determination of the claims for relief of the individual class members.

### **Relationship between Class Complaints and Individual Complaints**

An individual complainant may move for class certification at any reasonable point in the process when it becomes apparent that there are class implications to the claim raised in the individual complaint. If the complainant moves for class certification after completing the counseling process, no additional counseling is required.

An individual complaint that is filed before or after the class complaint is filed and that comes within the definition of the class claim(s), will not be dismissed but will be subsumed within the class complaint. If the class complaint is dismissed at the certification stage, the individual complaint may still proceed, unless the same or another basis for dismissal applies. If the class proceeds to a hearing, the individual claim may be presented by the class representative at the liability stage of the process, or it may be presented at the remedy stage by the complainant. If the

class complaint is dismissed at the certification stage, the class members may not proceed unless they have timely filed individual complaints.

### Mixed Case Complaints and Appeals

A mixed case complaint is a complaint of employment discrimination based on race, color, religion, sex, national origin, age or disability, or reprisal related to or stemming from an action that may be appealed to the Merit Systems Protection Board (MSPB). A mixed case appeal is an appeal filed directly with the MSPB that alleges that the Agency action was effected, in whole or in part, because of discrimination on the basis of race, color, religion, sex national origin, disability, age, or reprisal. There is no right to a hearing before an EEOC Administrative Judge on a mixed-case complaint.

Two determinations must be made to decide if the mixed case regulations apply:

1. You must have standing to file such an appeal with the MSPB.
  - Generally, the following employees have standing: competitive service employees not serving a probationary or trial period under an initial appointment; career appointees to the Senior Executive Service; non-competitive service veterans preference eligible employees with one or more years of current continuous service; and non-preference eligible excepted service employees who have completed their probationary period or with two or more years of current continuous service. (This is not an all inclusive list and further information may be obtained from the Human Resources Management Group.)
2. The claim(s) involved in the discrimination complaint must be appealable to the MSPB.
  - Although not an all inclusive list, most appealable actions fall into the following six categories: reduction in grade or removal for unacceptable performance; removal, reduction in grade or pay, suspension for more than 14 day, or furlough for 30 days or less for cause that will promote the efficiency of the service; separation, reduction in grade, or furlough for more than 30 days, when the action was effected because of a reduction-in-force; reduction-in-force action affecting a career appointee in the Senior Executive Service; reconsideration decision sustaining a negative determination of competence for a general schedule employee; and disqualification of an employee or applicant because of suitability determination.

You may receive pre-complaint counseling on mixed case issues, but you may not file both a formal EEO mixed case complaint with the Agency and a mixed case appeal with the MSPB. Whatever action you filed first is considered your election to proceed in that forum. Filing a formal EEO complaint constitutes an election to proceed in the EEO forum.

If you elect to file a mixed case complaint, your complaint will processed in the same manner as any other discrimination complaint, except:

- Within 45 days following completion of the investigation, the Agency will issue a final decision without a hearing before an EEOC Administrative Judge.
- Upon issuance of the final decision on a mixed case complaint, you will be advised of the right to appeal the claim to the MSPB (not EEOC) within **30 calendar days** of

receiving the decision, or file a civil action in an appropriate U.S. district court within **30 calendar days** of receiving it.

## **Sexual Harassment**

Sexual harassment is a form of sex discrimination prohibited by Title VII of the Civil Rights Act of 1964, as amended. It involves **unwanted** and **unwelcome** sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature when:

- ✓ They are made explicitly or implicitly a condition of an individual's employment; or
- ✓ Employment decisions (promotions, work assignments, etc.) are based on whether the victim submits to or rejects the sexual advances; or
- ✓ They unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive work environment.

The Agency's policy concerning sexual harassment commits to maintaining a high standard of conduct in the work place and to providing a work environment free from sexually harassing, offensive or inappropriate activity. Such activities are adverse to the overall accomplishment of our mission and the efficient operation of the Federal service. Accordingly, all CMS employees are responsible for maintaining a high standard of conduct in the workplace and must refrain from engaging in harassing, offensive or inappropriate activities.

Moreover, the Agency has a **zero tolerance** for any conduct of a sexual nature that could reasonably be interpreted as harassing, offensive or inappropriate in the work place. In addition to the Title VII standard cited above, any physical contact, comments, jokes, gestures, written documents, pictorials, images or other items or behavior of a sexual nature in a work or work-related environment constitutes harassing, offensive and inappropriate conduct and will not be tolerated.

Each CMS employee bears the legal and ethical responsibility to refrain from such unacceptable conduct in the work place. Managers and supervisors bear the additional responsibility for taking immediate and appropriate corrective action to enforce the Agency's policy when they become aware of sexually harassing, offensive or inappropriate activities.

If you believe you have been subjected to sexual harassment, offensive or inappropriate conduct of a sexual nature you should **immediately report** this to a supervisor or manager for corrective action. If your supervisor is the source of the harassment, offensive or inappropriate action, you should speak to the next highest level of management. If the supervisor/manager does not take immediate action to stop the harassing, offensive or inappropriate activity, you should bring the matter to the attention of the Office of Equal Opportunity and Civil Rights immediately (410-786-5110). You are free to report any incidents involving sexual harassment, offensive or inappropriate conduct without fear of reprisal.

## **Sexual Orientation**

On May 28, 1998, Executive Order 13087 was issued, prohibiting discrimination on the basis of sexual orientation in the Federal civilian workforce; it did not make provision for employees to bring claims on this basis before the Equal Employment Opportunity Commission. However, the Department of Health and Human Services has a policy of nondiscrimination based on sexual orientation.

If you believe that you have been discriminated against because of sexual orientation, you must seek EEO Counseling by contacting OEOCR within 45 calendar days from the date of incident. Your complaint will be processed as described above for individual complaints through the investigation. Based on the information developed by the investigation, an effort may be made to resolve your complaint on an informal basis. If resolution of the complaint is reached, the terms of the settlement will be reduced to writing and you will be provided a copy. If the complaint is not settled, the Director, of OEOCR will issue a decision addressing the merits of your claim on this basis and will provide you with appropriate information regarding your entitlement to appeal the decision to the DHHS' Director of EEO. Following a review of the entire record, the DHHS Director of EEO will issue a decision based on the merits of your claim and, if discrimination is found, order appropriate remedies and relief. The appellate decision of the DHHS Director of EEO is final and there is no entitlement to further administrative review of the complaint on the basis of sexual orientation.

## **Commissioned Corps Personnel Claims**

The processing procedures for addressing allegations of discrimination raised by Public Health Service (PHS) Commissioned Corps Officers are covered pursuant to the Commissioned Corps Personnel Manual, Instruction 6, Subchapter cc26.1, Equal Opportunity Discrimination Complaints Processing.

Further information regarding the complaint process for Commissioned Corp Officers may be obtained by contacting the OEOCR at 410-786-5110.

## **Withdrawals and Settlements of Complaints**

You may withdraw or settle a complaint at any stage of the process.

- If you desire to do so, you may seek the advice of an attorney or other qualified representative before you agree to settle or withdraw your EEO complaint. Both the withdrawal and/or settlement must be in writing and signed by you.

## **Remedies Not Available to You Under the Law**

The following remedies are not available in discrimination cases arising under the enforcement of the EEOC:

- Punitive damages (a monetary award to you as punishment of the person responsible for discrimination).
- Attorney fees incurred before you file a formal complaint or before you notify the Agency you are being represented by the attorney.
- Attorney fees if you file under the ADEA or EPA.
- Compensatory damages if you file under the ADEA or EPA, or in Rehabilitation Act cases if the Agency has made a good faith effort to provide a reasonable accommodation, regardless of whether there is a finding of discrimination.

## Resources

29 C.F. R. §1614

Management Directive 110 (MD 110)

AFGE – Master Labor Agreement (MLA)

ADR Brochure

- ADR Pilot Program
- ADR Frequently Asked Questions

Department policy on Sexual Orientation

Department policy on processing Discrimination Complaints including Commission Corps Personnel

### **Via Internet**

[www.EEOC.gov](http://www.EEOC.gov)

[www.MSPB.gov](http://www.MSPB.gov)

[www.FLRA.gov](http://www.FLRA.gov)